

DOCUMENT RESUME

03174 - [A2173298]

[Payment of Relocation Expenses Incurred Prior to Actual Transfer]. B-187045. August 3, 1977. 4 pp. + enclosure (1 pp.).

Decision re: Stanley N. Hirsch; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of Agriculture.

Authority: (P.L. 94-22; 5 U.S.C. 5702, as amended). 48 Comp. Gen. 395, 6. P.T.R. (PPMR 101-7), para. 1-7.3c (1). Bornhoft v. United States, 137 Ct. Cl. 134, 136 (1956). B-174983 (1972).

Orris C. Huet, Authorized Certifying Officer of the Department of Agriculture, requested a decision concerning a claim for relocation expenses incurred by an employee who completed settlement on a residence at his temporary duty station in anticipation of a permanent transfer. Although he was not officially notified of the transfer until after the completion of settlement on the property, he may be reimbursed for expenses incurred in the purchase and for moving and storage of household goods on the basis that the relocation expenses were incurred after he was informed that he would be transferred upon approval by the agency review panel. However, no per diem for his temporary duty may be paid for the period after he moved into his new residence. (Author/SC)

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**DECISION**



*Decision*  
*air mail*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-187045

DATE: August 3, 1977

MATTER OF: Stanley N. Hirsch - Payment of relocation expenses prior to actual transfer

DIGEST: Employee completed settlement on residence at temporary duty station on December 12, 1975, in anticipation of permanent transfer. Although he was not officially notified of transfer until March 14, 1976, he may be reimbursed for expenses incurred in purchase and for moving and storage of household goods on basis that relocation expenses were incurred after he was informed on August 30, 1975, that he would be transferred upon approval by agency review panel. However, no per diem may be paid after employee moved into new residence since he had effected change of residence and incurred no expenses for maintaining residence at old station.

This action is in response to a request dated July 21, 1976, from Ms. Orris C. Huet, an authorized certifying officer of the Department of Agriculture, for a decision on a voucher submitted by Mr. Stanley N. Hirsch for relocation expenses incurred by him in connection with his transfer from Riverside, California, to Fort Collins, Colorado.

Prior to travel orders being issued on April 6, 1976, authorizing Mr. Hirsch's transfer to Fort Collins, he was authorized an advance detail there effective October 26, 1975, for 30 days temporary duty. The record indicates Mr. Hirsch transported his wife and household goods to his new duty station at his own expense in anticipation of his transfer there at a later date. Mr. Hirsch purchased a new residence in Fort Collins which he took title to on December 12, 1975.

The reimbursement of Mr. Hirsch's real estate expenses, miscellaneous expenses, and the expense incurred in storing and moving his household goods, and his claim for mileage and per diem of his wife are questioned because they were incurred prior to official approval of the transfer and prior to issuance of travel orders to carry out the transfer.

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We have held that reimbursement of moving expenses incurred prior to and in anticipation of a transfer of official duty station may be allowed if the travel order subsequently issued includes authorization for the expenses on the basis of a "previously existing administrative intention, clearly evident at the time the expenses were incurred by the employee, to transfer the employee's headquarters." 48 Comp. Gen. 395, 396 (1968). What constitutes a clear intention to transfer an employee depends on the circumstances in each case.

It is stated that Mr. Hirsch was notified on March 14, 1976, that his transfer was permanent. However, there is evidence in the record of an existing administrative intention to transfer Mr. Hirsch at least as early as July 25, 1975, when the Assistant Director of the Rocky Mountain Forest and Range Experiment Station notified the Director, Pacific Southwest Experiment Station, that he had submitted a request for the establishment of a new position for panel review. This memorandum also stated an intention to transfer Mr. Hirsch to the new position if the position was approved. However, this memorandum did express concern as to whether the position would be established and if established, whether it would be at a grade high enough to accommodate Mr. Hirsch. Further, in the post approval of Mr. Hirsch's voucher on April 14, 1976, the Administrative Officer stated that when Mr. Hirsch was authorized the advance detail on August 30, 1975, he was advised that there was a possibility that this 30-day detail (to commence October 26, 1975) might mature into a permanent transfer.

As noted above, although the proposed permanent transfer depended on an intervening event, the review panel approval, there was an administrative intention on July 25, 1975, to transfer Mr. Hirsch to the position when it was established. Since Mr. Hirsch incurred the expenses for which reimbursement is questioned only after being told that he would be permanently transferred, albeit contingent upon the review panel approval, we believe that there has been substantial compliance with the applicable regulations and that he may be reimbursed for allowable relocation expenses.

With respect to the payment of per diem after December 15, 1975, the date on which he moved into the residence he purchased in Fort Collins, these payments were improper and should be recovered.

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Section 5702 of title 5, United States Code, as amended by Public Law 94-22, May 19, 1975, provides that under regulations prescribed by the Administrator of General Services, employees traveling on official business inside the continental United States are entitled to a per diem allowance at a rate not to exceed \$35. Implementing regulations appear in the Federal Travel Regulations (FPMR 101-7). Federal Travel Regulations para. 1-7.3c(1), as amended effective May 19, 1975, provides that per diem shall be established on the basis of the average amount the traveler pays for lodging, plus a \$14 allowance for meals and miscellaneous expenses. Federal Travel Regulations para. 1-7.3c(1)(a) requires that in computing per diem allowances there should be excluded from the computation the nights the employee spends at his residence or official duty station. More specifically FTR para. 1-7.3c(2) (May 19, 1975) requires that the traveler actually incur expenses for lodging before being entitled to such an allowance, and provides as follows:

"2. No minimum allowance is authorized for lodging since those allowances are based on actual lodging costs. Receipts for lodging costs may be required at the discretion of each agency however, employees are required to certify on their vouchers that per diem claimed is based on the average cost for lodging while on official travel within the conterminous United States during the period covered by the voucher."

As stated by the Court of Claims in Bornhoft v. United States, 137 Ct. Cl. 134, 136 (1956):


"A subsistence allowance is intended to reimburse a traveler for having to eat in hotels and restaurants, and for having to rent a room \* \* \* while still maintaining \* \* \* his own permanent place of abode. It is supposed to cover the extra expenses incident to traveling."

Under the rule set forth in Bornhoft, the only lodging expenses incurred by a traveler which may properly be reimbursed

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are those which are incurred by reason of the travel and are in addition to the usual expenses of maintaining his residence. In the instant case the record shows that the employee shipped his household goods rather than pay rent on his apartment at his old station since his wife accompanied him to his new station, incurred no expenses for maintaining a residence at his old station, and purchased a new residence in Fort Collins to which he took title December 12, 1975. Accordingly, Mr. Hirsch is not entitled to any cost of the lodging or subsistence at his own residence. B-174983, March 31, 1972.

In view of the above the voucher for transfer expenses may be certified for payment, if otherwise proper and collection of improper per diem payments should be recovered.

  
Deputy Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

D-187045

AUG 3 1977

The Honorable James P. Johnson  
House of Representatives

Dear Mr. Johnson:

We refer to your letters dated December 20, 1976, April 28, 1977, and June 30, 1977, on behalf of Mr. Stanley N. Hirsch, 3520 Terry Ridge Road, Fort Collins, Colorado, concerning his claim for expenses incurred in connection with a change of official station.

Enclosed is a copy of our decision of today D-187045, wherein it was determined that the requested reimbursement may be made for relocation expenses, but not for per diem allowances after he moved into his new residence. We trust that this is responsive to your inquiry.

Sincerely yours,

R.F.KEULER

Deputy Comptroller General  
of the United States

Enclosure